

# Smoking <sup>in the</sup> Workplace: Some Considerations

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**T**oday, management and workers alike are faced with a barrage of information and misinformation regarding workplace smoking issues.

Smokers and nonsmokers have lived and worked together in harmony for generations. Occasional disputes about when and where to light up have been settled individually, with common sense and courtesy. Now, there are some who would substitute laws and fines.

In many cases, proponents of workplace smoking restrictions are simply trying to force their own lifestyles on others. Unsuccessful in attempts to persuade many adults to quit smoking, those calling for broad restrictions are trying to keep people from smoking by segregating or otherwise punishing them for exercising their right of free choice.

These same supporters of workplace smoking restrictions also argue that this issue is a number one priority with management. Statistics, however, suggest otherwise.

In November 1988, The Washington Legal Foundation sponsored a survey of personnel policies in Fortune 1000 companies to determine what senior human resource managers identify as the most impor-

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tant workplace issues, problems and concerns, and to understand the relative importance of various specific personnel policies. Sixty percent of senior human resource managers polled cited maintaining a competent and contented work force as their greatest challenge.

The survey also revealed that managers perceive wages, job security, and health benefits as the top priorities of employees. Only two percent cited workplace smoking as an "important human resource problem."

Nevertheless, some anti-smokers continue to press for restrictions, claiming that cigarette smoke is a health hazard to nonsmokers; others say smokers are more costly to their employers than nonsmokers. Still others claim a legal right to a smoke-free environment.

### **Health Hazard Not Proven**

A detailed review of the scientific literature on environmental tobacco smoke (ETS) yields two basic conclusions:

- First, that ETS has not been shown scientifically to pose a health hazard to nonsmokers.
- Second, as a National Academy of Sciences panel noted recently, more and better research needs to be done.

In 1985, the International Agency for Research on Cancer (IARC) reviewed the quality of the evidence in the published reports then available on the ETS/lung cancer question. The IARC was critical of ETS research reports, concluding

that "each is compatible either with an increase or with an absence of risk." In other words, none established risk with any certainty.

U.S. Surgeon General C. Everett Koop acknowledged in December 1986 that more than half the studies used in his report on "involuntary smoking" found no consistent, statistically significant relationship between ETS and lung cancer in nonsmokers. In fact, a much higher percentage of the studies that have been done fail to find any such relationship.

A National Academy of Sciences (NAS) committee charged with reviewing the literature related to ETS reported late in 1986 that there is nothing in the scientific literature to support the conclusion that casual exposure to environmental tobacco smoke in public places—including the workplace—constitutes a health risk to nonsmokers.

Refutations of the premise that exposure to ETS causes adverse health effects in nonsmokers were also recorded in a February 1986 report in *Medical World News* that stated that "[s]olid scientific evidence of passive smoking's health risks to nonsmokers is as elusive as the smoke itself."

Yet another study in the July 1986 edition of the *British Journal of Cancer* concludes that environmental tobacco smoke carries no significant increase in risk of lung cancer, bronchitis or heart disease.

Serious weakness in ETS investigations cited by the Surgeon General have been noted by prominent independent scientists. The sci-

**"Should law-makers wish to take legislative measures with regard to passive smoking, they will, for the present, not be able to base their efforts on a demonstrated health hazard from passive smoking."**

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entific community continues to point up the flaws in interpretation as well as some research methodologies that have been applied. Respected German biostatistician K. Überla, in a 1987 review of the statistical evidence published in the *International Archives of Occupational and Environmental Health*, stated: "The volume of accumulated data is conflicting and inconclusive. The observations on nonsmokers that have been made so far are compatible with either an increased risk from passive smoking or an absence of risk. Applying the criteria proposed by the International Agency for Research on Cancer there is a state of inadequate evidence."

In a guest editorial in the June 1987 issue of *American Review of Respiratory Disease*, two noted Harvard Medical School professors, expressing their opinions against active smoking and in support of the Surgeon General's 1986 Report, stated: "The health impact of exposure to [ETS] at work, except for its irritation, is largely unknown. The report is on its weakest ground scientifically here."

While both insisted that ETS exposure is harmful to the health of the nonsmoker, the NAS committee and the Surgeon General also acknowledged that there is insufficient evidence to prove claims that environmental tobacco smoke impairs respiratory function or causes heart disease or allergies in adult nonsmokers.

A number of studies have shown that exposure to ETS in normal, everyday environments is

extremely low. For example, one recent study indicates that a non-smoking employee in a typical New York City office would have to work nonstop for almost 24 days—more than 550 uninterrupted hours—to be exposed to the nicotine "equivalent" of one cigarette.

### Tobacco Smoke and Indoor Air Quality

Indoor air pollution today is becoming a major work issue in some office buildings. The universal use of air conditioning and increased reliance on controlled environments in modern office buildings has focused attention on "sick building syndrome."

Employee complaints of sore and watery eyes, abnormally high absentee rates and visible signs of poor ventilation, such as dust around ventilation ducts, all are potential signs of "sick building syndrome." Although visible cigarette smoke often is targeted as a cause of the problem, we know now that in many cases, it is a symptom, not a cause.

In fact, when it comes to poor indoor air quality, tobacco smoke appears to be among the least common sources. Reports by federal and private experts suggest that environmental tobacco smoke is related to discomfort of building occupants in just two to four percent of all cases. And even in those cases, studies indicate that improved ventilation may relieve the condition.

That means lawmakers and business managers will accomplish little or nothing even if they succeed

**Visible tobacco smoke usually is a symptom, not a cause, of "sick building syndrome"**

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## **Once the underlying problem of poor ventilation is corrected, so too is any problem with ETS**

in removing every last wisp of tobacco smoke from the workplace solely by prohibiting smoking. Complaints of health problems and irritations may persist.

The government's National Institute for Occupational Safety and Health (NIOSH) reports that of the 203 buildings it examined following occupant complaints, just four cases—or two percent—were attributable to cigarette smoke. An independent analysis of more than 300 major private and public buildings by ACVA Atlantic, Inc., an indoor air quality analysis firm, identified tobacco smoke as a major contributing factor to air quality complaints in only four percent—twelve buildings.

While NIOSH identified ETS as a problem in a tiny handful of cases, inadequate ventilation was blamed in 50 percent. ACVA investigations reveal that improper attention to indoor air circulation was responsible in the majority of cases for the spread and breeding of infectious germs and allergenic dusts and spores—not to mention fiberglass particles, asbestos, chemical fumes, and a host of other hazardous airborne particles undetectable to the eye and nose.

Under normal conditions with ventilation that is operating according to established building codes, tobacco smoke very quickly dissipates. In fact, this disappearing act confirms that the ventilation system in an indoor area is working properly. In those few cases where visible ETS persists, the ventilation must be suspect immediately.

Problems with cigarette smoke should be viewed as a "tip-off" to the much more serious underlying problem of inadequate or improper ventilation. The good news is that once the underlying problem of poor air circulation is corrected, so too is any problem with ETS.

### **Costs to Employers?**

Eighty-two percent of the respondents to a 1986 survey of employers by the Bureau of National Affairs (BNA) for the American Society for Personnel Administration (ASPA) reported that the imposition of smoking restrictions had resulted in no cost savings or no savings that could be identified. Still, many proponents of workplace smoking restrictions cite studies that claim to show smokers are absent more frequently and incur higher insurance costs than nonsmokers.

But according to Marvin Kristein, an American Health Foundation economist who promotes economic arguments for workplace smoking restrictions, "we lack meaningful 'case-controlled' company comparisons of experience with smoking employees vs. nonsmoking employees vs. exsmokers and the impact on company cost." To achieve a scientific basis for such cost claims, Kristein admits, "would require studies and data we do not now—and most likely will never—possess." In fact, there is evidence that some smoking restrictions may actually increase business costs as smokers leave their desks for smoking breaks. For example, Dr. Robert

**Some smoking restrictions may actually increase business costs**

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Tollison, chairman of the Center for the Study of Public Choice at George Mason University, estimates that proposed legislation severely restricting smoking in federal buildings could cost \$309.5 million per year—\$867 per employee.

Smoking restriction advocates who argue that smokers are absent from work more often than nonsmokers rely on a statistical correlation that is weak at best. Experts such as UCLA economist Lewis Solmon argue that there is far too little evidence to draw such a conclusion.

Solmon notes that numerous factors affect employee attendance patterns, including job satisfaction, commitment to employer, personal problems, family responsibility, commuting time, age and gender.

As to the claim that smokers incur higher medical costs, Solmon stresses that such claims are based on studies alleging that smokers have a higher accident rate than nonsmokers. But, he notes, since smokers are most often found among blue collar workers, they are more likely to be engaged in strenuous physical activity which increases the likelihood of exposure to accidents.

**Morale? Productivity?**

Are smokers less productive than nonsmokers? Contrary to anti-smokers' claim, much of the data suggest they are not.

Ninety-two percent of respondents to the 1986 BNA survey for ASPA said either that imposition of smoking restrictions had not increased worker productivity, or that

they did not know whether an increase in productivity had occurred. Only four percent believed restrictions had in fact increased worker productivity. And a 1984 study released by University of Minnesota researchers found that people who smoke tended to be more productive than those who do not.

A survey of union representatives and managers in business, industry and government by Response Analysis Corporation of Princeton, N.J., found that among almost 2,000 local union officials and first-level supervisors:

- Two-thirds of survey respondents said employee smoking either has a positive effect or no effect on productivity.
- Seventy-eight percent said a smoking ban would not enable their organization to accomplish the same work with fewer employees.
- Only three percent of respondents agreed that "not hiring people simply because they smoke makes sense."
- Of the respondents who said their organizations restrict smoking, less than three percent said they did so because smoking interferes with job performance.

**A 1984 study by a University of Minnesota researcher found that smokers are more productive than nonsmokers**

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## **The courts have rejected arguments that a smoke-free workplace is guaranteed by the Constitution**

environment is guaranteed by provisions of the U.S. Constitution.

In cases where employees have tried to use common law to impose smoking restrictions, the courts generally have sided with the employer, most recently in a 1985 decision in *Smith v. AT&T Technologies, Inc.* There, the court noted that it "specifically does not believe or find from the evidence that the tobacco smoke at plaintiff's former workplace was harmful or hazardous to his health" or to the health "of the other employees in that area."

Accordingly, the court held that the employer had not breached any duty to its employees by refusing to segregate smokers from nonsmokers and to limit smoking to non-work areas of the building.

In Washington, D.C., in 1983, Judge William Pryor ruled that "Common law does not impose upon an employer the duty or burden to conform his workplace to the particular needs or sensitivities of an individual employee."

Smoking restriction advocates cite three decisions to support their claim of a universal right to tobacco smoke-free workplace: *Parodi v. Merit Systems Protection Board*, *Vickers v. Veterans Administration* and *Shimp v. New Jersey Bell Telephone*.

*Parodi and Vickers* involved claims by federal employees that their alleged hypersensitivity to tobacco smoke made them "disabled" or "handicapped" within the meaning of statutes applicable only to the federal government as an employer or to groups seeking federal aid. These cases have no relevance

aid. These cases have no relevance to the question of whether private employers have an obligation to provide a tobacco smoke-free environment.

The 1976 *Shimp* case, then, is the only one that has actually prohibited smoking in the workplace based on the theory that general common law can be used to compel smoking restrictions. A key determinant in *Shimp*, however, was the lack of any active defense by New Jersey Bell, which filed no answer to the complaint and submitted no affidavit in opposition to Shimp's request for a court order.

That the case has little precedential value is suggested by the court's dismissal of an identical complaint subsequently filed by Shimp's attorney before the same judge on behalf of another New Jersey Bell employee. In the second case, New Jersey Bell elected to defend itself.

In *Commonwealth of Pennsylvania v. Pennsylvania Labor Relations Board*, the court held that, for employees working under collective bargaining contracts, an employer cannot unilaterally impose smoking restrictions. Other decisions have established that, even where a broad "management rights" clause is contained in a collective bargaining agreement, such unilateral action may be subject to tests of reasonableness and equity.

The AFL-CIO has taken a position designed to protect the rights of its smoking members, opposing discrimination against smokers and calling for voluntary smoking policies.

***Parodi and Vickers have no relevance to the question of whether private employers must provide a smoke-free work environment***

**For employees working under collective bargaining contracts, an employer cannot unilaterally impose smoking restrictions**

devised cooperatively between labor and management.

Employment policies that discriminate against smokers are contrary to public policy and may violate state and federal laws. These same discriminatory policies that penalize employees who smoke raise fundamental equal protection questions. It is difficult to understand how discrimination against smokers can be rationally justified on productivity grounds. A secretary will not make more typographical errors than a nonsmoker. Nor will a bookkeeper add and subtract less efficiently if he or she smokes.

Legal questions aside, however, who would want to discriminate against smokers if the primary motive in hiring is to employ the best individual for the job?

**Common Sense and Cooperation**

Decisions involving smoking in the workplace are most appropriately committed to the good sense and common courtesy of smoking and nonsmoking employees. The question of when and how workers may smoke in the office is best settled by employer and employee consensus rather than by city council or state legislature.

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